

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

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Request for an Emergency	)	
Declaratory Ruling Filed	)	CC Docket No.
Regarding Wireless Enhanced 911	)	94-102
Rulemaking Proceeding	)	

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COMMENTS OF  
LOS ANGELES CELLULAR TELEPHONE COMPANY

Los Angeles Cellular Telephone Company ("LA Cellular"), by its attorneys, hereby submits these comments in response to the July 30, 1998 Public Notice ("Notice") issued by the Wireless Telecommunications Bureau ("Bureau") regarding the request for declaratory ruling filed by the State of California 911 Program Manager ("California 911 Manager") in the above-captioned proceeding. In the Notice, the Bureau seeks comment on three questions raised by the California 911 Manager pertaining to cost recovery and routing of E911 calls. LA Cellular has been working very closely over the past year with the California Highway Patrol and the California 911 Manager in implementing Phase I E911 service, and believes that such implementation in California pursuant to state-authorized cost recovery is near.

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In its first two questions, the California 911 Manager asks whether CMRS carriers must provide E911 service even if the state of California fails to provide carriers with immunity from liability, and if so, whether the state must enable carriers to recover the cost of maintaining an insurance policy against such liability and suits related thereto.

The Commission's rules provide that before a carrier is required to implement Phase I E911 service the PSAP administrator must, among other things, implement a mechanism for carriers to recover the costs of providing E911 service. See 47 C.F.R. § 20.18(f). The Commission, however, failed to specify what these costs might include. The Commission thus far has refused to establish a federal cost recovery mechanism and instead has emphasized that state and/or local officials should develop cost-effective and innovative cost recovery solutions tailored to meet CMRS carriers needs. Accordingly, a state that fails either to provide carriers immunity from liability arising from their provision of E911 service or to include the price of appropriate insurance coverage in its authorized cost-recovery system fails to enable carriers to recoup their costs and therefore has not complied with the Commission's rules.

The Commission specifically refused to preempt state tort law and provide carriers with federal immunity for negligent acts in their provision of E911 service. Due to the fact that the state of California does not provide immunity from liability for carriers, CMRS carriers in the state may be subject to numerous and/or

fraudulent lawsuits in connection with their provision of E911 service that could significantly undermine their financial stability. Thus, the price of an insurance policy is unquestionably a necessary and integral cost of a CMRS carrier's provision of E911 service. Consequently, CMRS carriers in California, where immunity from liability may not be available, need not implement E911 service until the state's cost recovery mechanism allows them to recover the monetary value of maintaining appropriate insurance coverage or otherwise recover the costs of providing E911 service within California.

The third and final question raised by the California 911 Manager relates to the requirement that CMRS carriers route 911 calls to the appropriate PSAP. The California 911 Manager requests clarification on whether the Commission's rules preempt state law in directing where CMRS carriers must route 911 calls. LA Cellular submits that the issue is not one of federal preemption, but rather a conflict between unambiguous California law and the desire to test an alternative plan. Indeed, the alternative plan would direct the routing of cellular 911 calls contrary to the requirements of state law.

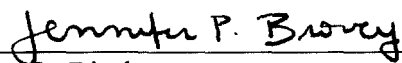
The Commission has clearly articulated that the "responsible local or state entity has authority and responsibility to designate the PSAPs that are appropriate to receive wireless 911 calls." Memorandum Opinion and Order, 12 FCC Rcd. 22665, 22713 (1997). Section 2892 of the California Public Utilities Code requires

that all cellular carriers route 911 calls to the nearest California Highway Patrol Communications Center ("CHP Center"). As part of the state's Phase 1 service trial in the Los Angeles area, however, the State of California has attempted to require LA Cellular to route its subscribers' 911 calls to a designated switching point maintained by another common carrier, who would then route the 911 call to the nearest appropriate PSAP, which may not be the nearest appropriate CHP Center. Thus, if LA Cellular were to adhere to the original E911 Trial design to route calls to a designated switching point and alternate PSAP instead of an appropriate CHP Center, it may be in violation of state law. Moreover, it would subject these carriers to liability risks from third parties relying on the carriers' provision of E911 service under the claim that the carriers were not abiding by California state law.

In any event, this conflict is for the California legislature -- not the Commission -- to resolve. Until there is a change in California law, the only "appropriate PSAP" for cellular calls in California is the CHP. Accordingly, until this issue is resolved, LA Cellular cannot, consistent with California law (or, therefore, Commission rules), forward E911 calls to the designated switching point and alternate PSAP in lieu of a CHP Center. LA Cellular is negotiating with the State of California to participate in the E911 Trial, but only under conditions that allow it to comply with California laws and not expose itself to risks involved with non-compliance with such laws. These negotiations should be allowed to continue without Commission

intervention. The Commission should decline the request for declaratory ruling by the State of California.

Respectfully submitted,  
Los Angeles Cellular Telephone Company

  
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Date: August 14, 1998

## CERTIFICATE OF SERVICE

I, Carly B. Tolchin, hereby certify that on this 14th day of August, 1998, true and correct copies of the foregoing Comments of Los Angeles Cellular Telephone Company were served by hand delivery, on the following parties:

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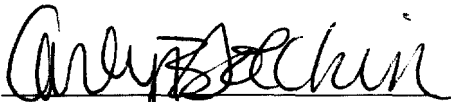
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